Independent Democrat.

TERMS, $3, "FREE TRADE; LOW DUTIES; NO DEBT; SEPARATION FROM BANKS; ECONOMY; RETRENCHMENT; AND STRICT ADHERENCE TO THE CONSTITUTION." In Advanc

Volume 1. CANTON, MISSISSIPPI, SATURDAY EVENING, NOVEMBER 19, 1842. Number 10.

The Independent Democrat,
IS EDITED AND PUBLISHED EVERY SATURDAY,
BY JOHN HANDY.

TERMS —*Three Dollars, invariably* in advance. Persons wishing to discontinue will please give notice thereof in writing.

No subscription received for a less time than six months.

Advertisements inserted at the rate of *One Dollar* per square, (ten lines or less,) for the first insertion, and *fifty cents* a square for each continuance.

Advertisements which are not limited on the manuscript, as to the number of insertions, will be continued until ordered out, and charged accordingly.

Articles of a personal nature, whenever admitted, will be charged at the rate of *Two Dollars* for every ten lines for each insertion Political circulars or public addresses, for the benefit of individual persons or companies, will be charged as advertisements, and at the same rates.

Announcing Candidates for office will be *Ten Dollars* each.

All *Job Work* must be paid for on delivery.

Postage on letters must be paid, or they will not be attended to.

From the National Intelligencer.

THE BENCH AND THE BAR.

In the "Law Reporter" for May last, published in Boston, we find an able article with the above title, "The Bench and the Bar," which seems as applicable to our southern as to our northern judicial tribunals; and we therefore copy the following extracts:

"The necessity and utility of the legal profession having been recognised by legislative enactment, and the members of it restored to an equality of rights and privileges with their fellow citizens—and, by the law of the land, all parties litigant having a right to be heard in all courts by counsels—we propose to consider the nature and extent of this right.

"In the first place, as the judges of our courts hold their offices and discharge their functions by virtue of provisions in the Constitution of our Commonwealth, and of laws enacted in conformity with those provisions, counsel also derive their rights and authority from the same high sources; the latter, acting within proper limits, standing at the bar in aid of their clients, are surrounded and protected by constitutional guaranties, in the same sense and to the same extent as to the former, though elevated to the bench and charged with the high duties and responsibilities of presiding in those tribunals.—We intend, therefore, in what we are about to say, to consider the bench and the bar, as coordinate branches of our judicial system, both equally essential to the due administration of justice; and we shall speak of their correlative rights and duties.

"The general business of courts is, to hear parties; their allegations, evidence, and arguments; and as this whole matter is managed through the agency of counsel, the right of counsel is, in fact, the right of their clients to be heard. Still this right is not without limitation and qualification. All organized bodies must of necessity have established rules and modes of proceeding in the transaction of the business before them. To these counsel must conform. The presiding judge being charged with the maintenance of good order, and with the proper despatch of business, he, like all other presiding officers, is to be treated with respect and decorum in all proceedings before him. The rules of law, as to the kinds of evidence and manner of bringing it before the court or jury, must also be observed. These limitations and qualifications being satisfied, in all other respects counsel may conduct their causes according to their own discretion, for the good of their clients. As to the sort of evidence, (it being competent by the rules of law,) and its quantity, the length of time occupied in the argument, whether to the court or jury, and the number and kind of arguments, all these are matters for the sound discretion of counsel, and they may and must decide upon them, having in view nothing but the true interest of those whose agents and representatives they are. As to all these, strictly, the court has no right to interfere, even by way of advice or suggestion.

"Keeping these general principles in mind, it may be well to consider some of the ways in which the rights of counsel may be, perhaps sometimes are, violated.

"The judges, being responsible for the despatch of the business of their courts, and bound to give all parties a hearing in their turn, and most of our courts being greatly pressed and overburdened with causes, it is natural that the presiding judge should at all times feel anxious to make progress with all reasonable speed in the matters before him. This feeling he brings with him as he ascends the bench in the morning; it remains with him and does not leave him when he goes to his chambers at evening; it may be said to be the *evil genius* of a judge, which haunts him in his dreams. But if he do not confine it to his own breast; if he suffer it to break out in expressions of impatience, or a desire of greater speed in the despatch of business, he is guilty of violating the rights of counsel, and of those who, by their aid, are seeking justice before him. It is of no avail that he gives these hints of haste and impatience in the mildest language and in the kindest manner; he has no right to let it be known that he has any such feelings. His whole business is with the subject-matter in hand, the case then before him; and his whole aim should be to do justice in that. And there is no other way to accomplish this but to give a full and patient hearing to the parties through the whole trial. It is unjust as well as unkind to give pain and uneasiness to those engaged in the cause by manifestations of a desire to hasten them and to get rid of them. In all suits, one of the parties must be vanquished: and if he feels that he has had a full hearing, without restraint or improper haste, he is satisfied. Nothing short of this can or ought to satisfy him. It is true, in most trials much more time is consumed than to the judge seems to be necessary. But this is no affair of his; he has no responsibility in this part of the matter. He must keep out illegal and irrelative matter; but within the rule of competency the discretion of counsel is to govern as to amount of matter and length of time. Counsel often produce more evidence upon a point, or insist more upon it in argument, than the judge thinks necessary or advisable, and he often gives such hints to the counsel; but upon these matters the counsel, who have become familiar with all parts of the cause, can decide much better than the judge, who is new in it, and if they could not, it is their right and their duty to decide in spite of the opinion of the judge.

"In thus giving fair scope to counsel, according to their just and constitutional prerogative, it may be that business will not be despatched as the court might wish, and other parties who are waiting to be heard may desire; but as to this, also, the judge is not responsible. His duty is to do rightly and well what is done—and if he be obliged to leave much undone, for want of time, he is innocent. *'Judex damnatur, cum nocens absolvitur;'* but no blame can come upon him merely because he has not been able to go through with the whole docket, and ascertain which party in each case is innocent. It is the duty of the legislative department of the government to see to it that the bench is supplied with judges sufficient in number to administer justice 'without delay,' as in the Constitution is provided.

"When a judge so far forgets the dignity and decorum pertaining to his office as to apply stimulants to counsel to urge them forward in the business before the court, professedly upon grounds of public necessity, we ought not to presume that other motives really actuate him. But it behooves a judge, who feels within himself a temptation thus to trespass, to search his own heart, lest, peradventure, some part of his motive be to promote his own convenience to finish a term and secure a longer vacation.

"In the progress of a trial, the judge is apt to suppose that he discerns which party has the right on his side. This is a dangerous feeling for him to entertain. Sitting in the sacred seat of justice, and, being human, there is danger that he will lose his impartiality, and begin to lean towards that side where he has already discovered the truth to be. Having thus prejudged the case, he may be influenced by it, unconsciously, to rule out or rule in evidence, or to put questions and make suggestions favorable to his view of the case, and to the great injury of the other side which, after all, will most likely turn out to be right. For it is perfectly certain as the aspect of a case is shifting with every new piece of evidence, and almost with every new piece of evidence, and almost with every word that comes out, any opinion concerning the merits in the midst of the hearing would be more likely to be wrong than right. In most cases it is the erroneous view which is the most obvious—the correct one is to be dug out and brought to light. It is truth which resides in a well, and it is error which generally covers the well. Besides, as the object of the whole trial is to discover which party has the right, the judge not only can not know, but he ought not to wish to know, until the end, which has it. It is his safety and the safety of the parties that he should studiously keep himself ignorant, and so unbiassed, as to this vital point, until the close. And yet, from a neglect of these obvious principles, or rather from the difficulty of acting in conformity to them, especially with some minds and peculiar temperaments, most of the unpleasant passes between judges and counsel arise. Having made up a hasty opinion as to the right side of the case, the judge grows impatient of the testimony and arguments of those who are wrong; he begins to interrupt, to hurry, and bustle, and complain of great waste of time, and manifest in every possible manner his desire to cut short those who, in his judgment, are struggling for what they ought not to obtain. It is not uncommon to see a judge thus giving battle to counsel thro' a day, or even two: and yet, after a long struggle, being honest and willing to change his opinion upon new light or sufficient force, he veers around and is as much inclined upon the other side. Judges with such ill balanced minds and of such wayward tempers, are the *cruces legales* upon which counsel are stretched and tortured for the trial of their faith and patience.

"It has happened sometimes that a judge becomes so strongly impressed with the belief that a particular side of the cause is right and ought to prevail, that he cannot restrain his actions nor conceal his bias.—If he hears the counsel upon the side which he has decided in his own mind to be wrong, pressing his arguments to the jury with an earnestness and success which seem likely to carry them in the wrong direction, he interrupts the speaker and throws in some countervailing suggestions to take off the edge of the reasoning of the advocate. Such conduct can hardly be reconciled with honesty in the judge; still cases have occurred where it has arisen from mere inadvertence on his part, his feelings getting the start of his sense of propriety and duty.

"There is another fault akin to the one just spoken of, incident to the bench. The judge assumes to interrogate a witness, either breaking in upon the examination by counsel for that purpose, or putting his questions after the one or the other party has ceased to examine the witness. In so doing, he proceeds upon an erroneous notion of the duties of his office. He supposed either that it is his duty to aid the parties in bringing their evidence before the jury, or that it is his duty as judge to know all that can be known in the case before him. In both these suppositions he is mistaken as far as civil suits are concerned. He not only is not bound, but he has no right to assist either party in any particular. In assisting one, he obstructs and injures the other, and so does injustice. And as to his obligation to know all the facts which may exist in a case when the trial is by jury, he is subject to no such duty, and has no such right. It is his duty to take the case, or rather let the jury take it, as the parties by their counsel choose to present it, if all the facts are not sifted from the witnesses, he must not interfere. This part of the business of trials belongs to the bar, and with them the bench may safely leave it; they are bound to leave it there, whatever may be their feelings on the subject. The court, strictly speaking, have as much right to call witnesses for a party as to draw out facts, or aid in drawing out facts from those actually called. The judge has a right to understand what is testified or stated in a cause, and for this purpose, if he has not distinctly heard or comprehended what has passed, he may ask to have it repeated; but for this he should, in strict propriety, address himself to the counsel that they may procure the repitition or re-statement for his benefit. In a trial by jury the strict and plain duty of the judge is most obviously to take the cause as it comes along, ruling all matters of law as they arise, keeping full minutes of all that is said and done, and neither to ask nor desire more than what is presented to him. What thus comes out by the efforts of the parties, constitutes the case and the whole case.

In the argument of cases before the court, in the absence of a jury, there is seldom occasion to regret unpleasant occurrences between the bench and the bar.—Sometimes, however, even there, impatience is manifested Occasionally also, a judge indulging an unwise ambition interrupts the arguing counsel with questions, and asks a solution of difficulties in the case, by way of showing that he has already plunged deeper in the mysteries of the matter than counsel who have devoted themselves to its examination perhaps for years. This is a sorry way of displaying superior discernment. The true way, the only way for judges to discharge their duty in such a hearing is, instead of interrupting counsel, or turning over the pages of the docket, or the papers in the next cases, in their impatience or listlessness, to take careful minutes of the arguments urged by counsel, and of the cases cited by them that they may not shoot so wide of the mark as they sometimes do in speaking of what passed at the hearing. It is only a proper respect towards counsel to do this, but it is, in reality, desirable that the court in deliberating upon the case, should be possessed of the points relied upon by counsel, whether the same were tenable or otherwise. It has been said that the Supreme Court of the United States affords the most perfect example of decorum and propriety in the hearing of causes. There no interruptions, no impatience, no fatigue or inattention on the part of the court, annoy the counsel. They are permitted to state their points and maintain them in their own way. In the history of that court, only one instance has heard of in which they have deviated from their usual untiring indulgence. In that case, after a most learned and eloquent advocate, now departed, had spent three days in opening an argument, roving through a l creation, from the fall of Adam to that of Niagra, not having yet disposed of first principles, the late chief justice of that court ventured to say to him on the morning of the fourth day, after apologizing for making the suggestion, there are some things which the court may be presumed to know.'

"In the demeanor of the judges towards the members of the bar, as to mere manners and mode of address, there is not much which is objectionable in our highest courts. There is not, to be sure, that high breed civility and amenity which are observable in the English courts; but some part of this difference is owing to the effect of our republican institutions upon the general manners of society. It is also true, occasionally, that a judge, fatigued with official labors, or influenced by an unhappy physical or nervous temperament, accosts a member of the bar in a rude, coarse, or harsh manner, more particularly unseemly as coming from so high a functionary, and sometimes, in the hurry of business, when many are pressing to be heard, the judge cannot spare time to be civil; but these things, happily, are not of very frequent occurrence.*

"So many are the ways in which judges can interfere in the progress of a trial before a jury, and give a direction to it for or against a party, and so dangerous is such a power in human hands that many have suggested the expediency of changing, to some extent, our mode of managing a trial by jury in our new England courts. Indeed, already in some of the Western and Southern States a radical change has been introduced. Their republican jealousy of official influence and interference long ago decided that judges should have nothing to do with the facts of a cause. Instead of permitting them, as with us and in England, to charge the jury by a recapitulation of the evidence and facts, in those States the judge is forbidden to speak to the jury upon the facts in any way whatever, and he is not permitted to state the law to them, except upon those points upon which counsel have requested him so to do, in order to raise the point for decision by the whole bench. Whether or not this is an improvement in the mode of trying causes before a jury, we have not here space and time to consider; we may, perhaps, resume the discussion of the subject hereafter is connexion with other topics touching judicial proceedings."

* It is worthy of remark, in the judicial history of the Union, that of the four cases of impeachment, the whole number which have been brought before the Senate of the United States, the only two of any importance, and the only cases which were really tried, originated in alleged misconduct of judges towards counsel. In the impeachment of Judge Samuel Chase, in the fourth article, it was alleged "that the conduct of the said Samuel Chase was marked by manifest injustice," &c.

"3. In the of unusual, rude, and contemptuous expressions towards the prisoner's counsel," &c.

"4. In repeated and vexatious interruptions of the said counsel, on the part of the said judge, which at length induced them to abandon their cause and their client, who was thereupon convicted," &c.

These proceedings were alleged in the impeachment to have taken place in the trial of "a certain James Thompson Callender for a libel on John Adams, then President of the United States," at Richmond in Virginia, in the year 1800. The trial took place before the Senate in February, 1805, and is remarkable as exhibiting a most splendid array of genius and eloquence, both on the part of those who managed the impeachment in behalf of the House of Representatives, and on that of the counsel for the distinguished defendant. No display of forsenic talent and skill can be compared with it during the last hundred years, except the trial of Warren Hastings and that of the Queen Consort of Great Britain. It is further remarkable that although Judge Chase was acquitted by a majority of the Senate upon five out of eight of the articles of impeachment, he was voted to be guilty by a majority upon three of the articles, one of which was the fourth, charging him with misconduct towards counsel, as stated above.

The other case was that of Judge James H Peck. who was accused of having imprisoned and fined Luke Edward Lawless, a counselor at law, for an alleged contempt of court, without any lawful right to do so. The Senate acquitted him by a majority of one vote.

In both cases those who voted to acquit probably did so upon the ground that no corrupt motive or wicked intent was sufficiently made out. As to both, there could be little doubt that they were honest judges, intending to do their duty and no more, but exhibiting a zeal and haste somewhat indiscreet. A vote of two-thirds being required to convict in cases of impeachment before the Senate of the United States, the respondents in both the above cases were acquitted.

DECORATING THE GRAVE WITH FLOWERS.

There is a kind of pathos and touching tenderness of expression in these sweet and fragrant emblems of affection, which language cannot reach, and which is calculated to perpetuate a kind of soothing sympathy between the living and the dead. They speak of cords of love, too strong for even the grave to break assunder. This practice, no doubt, gave rise to the ancient custom which prevailed in the East, of burying in gardens, and is one which conduces to the gratification of the best feelings of our nature. It prevailed generally in and about the Holy City, and also among the Medes, Persians, Grecians, and Romans. The Persians adopted it from the Medes—the Grecians from the Persians. In Rome, persons of distinction were buried in gardens or fields near the public roads. Their monuments were decorated with chaplets and garlands of flowers.

The tomb of Achilles was decorated with amaranth; the grave of Sophocles with roses and ivy; that of Anacreon with ivy and flowrets. Basket of lilies, violets, and roses, were placed in the graves of husbands and wives; white roses on those of unmarried females. In Java, the inhabitants scatter flowers over the bodies of their friends: in China the custom of planting flowers on the graves of their friends, is of very ancient date and still prevails. The natives of Surat, strew fresh flowers on the graves of their saints every year.

In Tripoli, the tombs are decorated with garlands of roses, of Arabian jessamine, and orange and myrtle flowers.

In Schwytz, a village in Switzerland, there is a beautiful little church yard, in which almost every grave is covered with pinks. In the elegant church yard in Wirfin, in the valley of Salza, in Germany, the graves are covered with little oblong boxes, which are planted with perennial shrubs, or renewed with annual flowers; and others are so dressed on fete days. Suspended from the ornaments of recent graves, are little vases filled with with water, in which the flowers are preserved fresh. Children are often seen thus dressing the graves of their mothers—and mothers wreathing garlands for the graves of their children.

A late traveller, on going early in the morning into one of the church yards in the village of Wirfin, saw six or seven persons decorating the graves of their friends, and of some who had been buried twenty years. What a delightful and profitable school for the affections, would such scenes afford the visitors of the New Haven Cemetry? This custom also prevails in Scotland, and in North and South Wales. An epitaph there, says:

"The village maidens to her grave shall bring
The fragrant garland, each returning spring,
Selected sweets! in emblem of the maid,
Who underneath this hallowed turf is laid."

In Wales, children have snow drops, prim roses, violets, hazel-bloom, and sallow blossoms on their graves. Persons of mature years, have tansy, box, and rue.—In South Wales, no flowers are permitted to be planted on graves but those which are sweet-scented. Pink, polyanthus, sweet williams, gilliflowers, carnations, mignionette, thyme, hyssop, camomile, and rosemary, are used. The red roses are appropriated to the graves of good and benevolent persons.

In Easter week, most graves are newly dressed, and manured, with fresh earth.—In Whitsuntide holy days, they are again dressed, weeded, and if necessary, replanted. No person ever breaks or disturbs flowers thus planted. It is considered sacrilege. To the shame of some depraved wretches, I saw evidence that it is not so in New-Haven.

In Cabol, burying grounds are held in great veneration, and called *Cities of the Silent*. The Jews called them *Houses of the dead*. The Egyptians visited the graves of their friends twice a week, and strewed sweet bazil on them, and do to this day.

While the custom of decorating graves and grave-yards with flowers, and ornamental trees and shrubs, has prevailed so long and extensively among ancient and modern civilized nations, some of the American aborigines will not permit a weed or blade of grass, nor any other vegetable, to grow upon the graves of their friends. With few exceptions, there has hitherto been in our country, a strange remissness on this subject which would surprise the heathen. Graves and Churchyards are left to the course of gradual dilapidation and decay, which ever follows in the train of moral degradation!—*New Haven Palladium.*

Now that our Representatives in Congress have returned to their homes, we may well ask the question: what have they done? As far as can be gathered from the concurring sentiments of the whig party, and their expressed opinions during the contest of 1840, the objects and ends at which they aimed, and which they promised to secure in the event of their success—were—not a National Bank—not a distribution of the proceeds of the public lands—for to these measures the South was at the period referred to, whatever it is now, certainly opposed. These are measures, and the only ones, which the death of Gen. Harrison prevented them from carrying out. John Tyler is not then to be saddled with the guilt of any of their sins or omissions, and while their majority in both Houses of Congress has been decided, they have had ample means, first in the called session of 100 days, and again at the regular session of 250 days, for perfecting all of their undertakings.—What, however, has been the result?—They railed against the extravagance of Mr. Van Buren's administration, promised retrenchment and economy, and professed to be able to carry on their government with thirteen millions per annum. For their sincerity on this score, look to the debt of thirty-five millions created during the first year of their sway, and the appropriation of twenty-four million at the last session. This too, it must be remembered, at a time when the burdens that long oppressed the treasury, had been in a great degree removed; when the pension list had been curtailed, the expense of removing Indians from the limits of the United States in a great degree put an end to, few public buildings erected, and the drain of the Florida war almost entirely closed. The want of necessity for this extravagance will appear, when we consider some of the items of appropriations passed by the whig majority in Congress, here bearing in mind that the estimates of the Whig Secretary of the Treasury for the present fiscal year, were thirty-seven millions, which would have been voted but for the union of some of the moderate administration men with the democratic party. Their two uselessly prolonged sessions, spent in such a manner as to disgrace the country, and dishonor themselves, cost the nation about 14,000,000 in the first place; the claim of the heirs of the coward Hull, for the payment of his services of Governor of Michigan, after his surrender of that territory, they allowed, while the unjust fine imposed on Gen. Jackson for saving Louisiana, was refused to be remitted. Nineteen thousand dollars they pay over to Mr. Senator Henderson, for the destruction of wood, committed by a parcel of Indians upon some 300 acres of pine shrubbery belonging to that gentleman, which was worth land and all, not more than forty cents per acre; the appropriation for the Judiciary they made unnecessarily large, refusing at the same time to make those reductions in the expenditures for the army and navy, which the foreign relations of the country would have justified. In 1840, the principle of action, "to the victors belong the spoils," was denounced by the whig party as unjust, immoral and anti-christian, and "proscription" was to be "proscribed;" how faithfully, since they obtained power, has this promise been kept by them, the records of the Senate, and the proceedings of Mr. Granger and the other heads of depsrtment can testify.—Exclaiming against the luxurious magnificence of the Presidential mansion, one of their first acts was to pass an appropriation for new furniture for that building. They abused Mr. Van Buren for suffering the introduction of negro testimony in the case of Lieut. Hooe, and yet most of the Northern portion of their party opposed Mr. Calhoun's amendment to the Navy appropriation bill, for preventing the enlistment of colored seamen. Crying out for the right of petition and freedom of debate, the House of Representatives has muzzled the minority by the establishment of the hour bill, and arrogating the title of "Democratic States' Rights men," that party has passed a "remedial justice bill, which deprives a State of her rightful municipal jurisdiction, in cases of felonies committed within her limits by foreigners, under color of an order of some foreign authority. They have enacted an oppressive tariff for protection within two years of the period that Southern whigs supported Gen. Harrison, on account of his promised adherence to the Compromise act. To all classes they promised on their advent to power, better times, a restoration of the currency and exchanges, and a return of national, State and individual credit; the agriculturist was seduced by the hope held out of high prices for his produce, while the cry to the mechanic and manufacturer was $2 per day and roast beef, instead of Van Buren's policy, 10 cents a day and bean soup." Who will say that these promises have been yet, or are soon likely to be performed by them?—*Ala. Tribune.*

ANOTHER NATIONAL BANK!

No, No!!—There is nothing in the future which holds out the speedy prospect of another paper inflation.

A National Bank, or other great paper machine, cannot be expected for years.—Prices and values must, in the mean time, find bottom, and involve the destruction of all concerns dependent upon a re-action. The old Bank of the United States ceased to exist in 1811, the war intervened, and two years only after the war, a new National Bank went into operation, and it did so, while every thing was in confusion—prices and values had not found their level after previous speculation. This is now not the case. Already six years have elapsed since the expiration of the National charter, and two since the final dissolution of its corrupt remains—five years, at least, must yet elapse before another Bank. Affairs are now neatly settled on a new basis. The confusion, incident upon a transition from the paper to the specie system, has nearly subsided. During the effervescence, it, as formerly, gave the friends of a Bank the ascendency, and a bill passed Congress, but was defeated by the President. The operating causes which passed that bill cannot again be called into action. During the five years that are to come, business will have assimilated to the new system. People will again have become prosperous, and the country rich. Under such circumstances it will be difficult to get up a Bank—*New-York Herald.*